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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,087	07/16/2003	Nino Silvestro	LEE 2 00310	9266
27885	7590	04/18/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			KERNS, KEVIN P	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/621,087	<b>Applicant(s)</b> SILVESTRO, NINO	
	<b>Examiner</b> Kevin P. Kerns	<b>Art Unit</b> 1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 28-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 28-43 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Objections*

1. Claim 29 is objected to because of the following informalities: in the 1<sup>st</sup> line, "lock" should be changed to "locking" before "device" to obtain proper antecedent basis. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-11, 28, and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourne (US 4,365,831) in view of Tweedy (US 6,606,889).

Bourne discloses a channel latch for a door and latch assembly, in which the door and latch assembly is operable for use on an electric arc welder having an access door mounted on a (welder) housing, such that the door has open and closed positions to access and cover, respectively, the inside of the housing (page 1, line 14, of applicant's admitted prior art, in the form of a background description referring to Bourne), with the door and latch assembly further including the following: a latch 3 pivotally mounted on the door via pivot means 5, with the latch 3 being rotatably movable between a latch closed (locking) position and a latch open position via latch

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spring 7; and a latch trigger means 15 operable to be pivotally mounted on the door via a latch trigger spring adjacent pivot 23, such that the latch trigger means 15 further includes a latch trigger actuator biasing means 21, which results in the latch trigger means 15 being movable between first and second positions that control the closing and opening of latch 3 (abstract; column 1, lines 5-45 and 59-68; column 2, lines 1-68; column 3, lines 1-20; and Figures 1-5). Bourne does not disclose the use of a locking device that locks the latch in a closed position when enabled, while allowing the latch to move toward an open position when disabled.

However, Tweedy discloses a pivot latch mounted on a door, in which the pivoting lever latch 21 is rotatably mounted on door 20 within door frame 22 that includes a housing 23, and connected via a torsion spring 27, with the door 20 being rotatable between locked and unlocked positions via a pivotally mounted trigger mechanism 33 to retain a handle 24 within housing 23 via another torsion spring 30, forming a locking device with a latchpin, or catch, such that the locking device is advantageous for easy installation and operation for latching a door within a door frame (abstract; column 1, lines 6-15; column 2, lines 13-67; column 3, lines 1-7 and 51-67; column 4, lines 1-67; column 5, lines 1-45; and Figures 5 and 7).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the channel latch for a door and latch assembly, as disclosed by Bourne, by using the pivot latch mounted on a door, as taught by Tweedy, in order to obtain a latch for a door within a door frame that is easy to install and operate (Tweedy; column 1, lines 12-15; and column 2, lines 13-18).

4. Claims 6, 29-36, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourne (US 4,365,831) in view of Tweedy (US 6,606,889) as applied to claims 1, 28, and 37 above, and further in view of Worley, Jr. et al. (US 1,592,405).

Bourne (in view of Tweedy) disclose and/or suggest the elements of independent claims 1, 28, and 37 above. Neither Bourne nor Tweedy discloses that the locking device includes a tab extending upwardly from the door and having a throughhole adapted to receive a lock (padlock) to maintain the latch in a closed position.

However, Worley, Jr. et al. disclose a door latch mounted to a door, such that the door latch 23 includes a tab 29 having a throughhole (eye 43) that extends upwardly from the door and is operable to receive a shackle 44 of padlock 45 to maintain the latch in a closed position by preventing the latch from being rotated out of a latching position (page 1, lines 1-38 and 57-107; page 2, lines 1-93; and Figures 1-5).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the channel latch for a door and latch assembly, as disclosed by Bourne, by using the pivot latch mounted on a door, as taught by Tweedy, in order to obtain a latch for a door within a door frame that is easy to install and operate, and by further including a locking device includes a tab extending upwardly from the door and having a throughhole adapted to receive a lock (padlock) to maintain the latch in a closed position, as disclosed by Worley, Jr. et al., in order to prevent the latch from being rotated out of a latching position (Worley, Jr. et al.; page 2, lines 53-70).

### ***Response to Arguments***

5. The examiner acknowledges the applicant's amendment received by the USPTO on January 24, 2005. The amendment overcomes the prior objection to claim 4, but an objection to new claim 29 has been raised. The applicant's remarks/arguments overcome the prior 35 USC 103(a) rejection in view of Dean. The applicant has cancelled claims 12-27, while adding new claims 28-43. Claims 1-11 and 28-43 are currently under consideration in the application.

6. Applicant's arguments with respect to claims 1-11 (now claims 1-11 and 28-43) have been considered but are moot in view of the new ground(s) of rejection.

The applicant is referred to the newly underlined portion of Bourne in above paragraph 3. Furthermore, Tweedy and Worley, Jr. et al. also individually disclose a pivot latch mounted on a door, such that common structural limitations in analogous (pivoting latch) art, have been established in the combination of Bourne with Tweedy and/or Worley, Jr. et al. under 35 USC 103(a).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Smith et al. and Swan et al. references are also cited in PTO-892.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kevin P. Kerns whose telephone number is (571) 272-1178. The examiner can normally be reached on Monday-Friday from 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin P. Kerns *Kevin Kerns 4/13/05*  
Primary Examiner  
Art Unit 1725

KPK  
kpk  
April 13, 2005